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Navajo Nation Council approves Navajo Generating Station lease extension

WINDOW ROCK – At a special session on Monday, the Navajo Nation Council voted 20-1 to approve Legislation No. 0042-13, extending the Navajo Generating Station’s lease for an additional 25 years beginning in 2019.

The Council approved a total of ten amendments to the legislation during the six-hour discussion.

Council Delegate Katherine Benally (Chilchinbeto, Dennehotso, Kayenta) offered the first amendment in which the Navajo Nation declared that the federal U.S. government’s contractual interest in NGS, held by the Salt River Project for the Bureau of Reclamation, is in direct conflict with the federal government’s trust responsibilities and duties to the Navajo Nation.

“[Through the] Bureau of Reclamation, the U.S. government is essentially an owner of NGS in absolutely every single way possible except for a few words on a piece of paper,” said Council Delegate Dwight Witherspoon (Black Mesa, Forest Lake, Hardrock, Pinon, Whippoorwill) who voiced support for Delegate Benally’s amendment.

Delegate Witherspoon argued that the potential to obtain water rights that were waived by the Nation in the original lease agreement outweighs the financial benefits the Nation would receive from the amended lease extension.

“That water will be absolutely more important to the Nation, and that’s why I can’t in good conscience, participate in a legislation that would take away our future for our children, our grandchildren, and great-grandchildren,” Delegate Witherspoon said. “That water is critical for life.”

Council voted in support of the amendment with a vote of 21-0.

Council then quickly approved a second amendment with a 19-1 vote, requiring lessees to cover ash disposal with 12-inches of earth.

Council Delegate Walter Phelps (Cameron, Coalmine Canyon, Leupp, Tolani Lake, Tsidi To ii) motioned to amend language to give Navajos employment preference to the extent allowed by law, provide Navajo preference in all training opportunities, and ensure that Navajos are prepared to assume positions at all levels.

Further language stated that if federal law prohibits employment preference based on tribal affiliation, lessees will follow Indian preference.

The language also stated that in certain circumstances the need for critical or specialized skills at NGS will require selecting the most qualified person whether or not they are Navajo.

The proposed amendment was met with opposition from numerous delegates, including Council Delegate Leonard Tsosie (Baca/Prewitt, Casamero Lake, Counselor, Littlewater, Ojo Encino, Pueblo Pintado, Torreon, Whitehorse Lake).

“This is troublesome,” said Delegate Tsosie. “It’s like reading ‘lessees will give preference to other Indians, rather than to Navajos’. It’s dangerous language to add.”

Delegate Benally urged her colleagues to vote down the proposed amendment, and to uphold a similar amendment regarding the Navajo Employment Preference Act passed by Council on Apr. 17, during the spring session.

Delegate Phelps clarified that the proposed amendment would replace the previous amendment approved by Council during the spring session.

After lengthy debate, Council voted in support of the amendment with a vote of 12-9.

Council also approved an amendment to change language to reinstate a \$1 million signing bonus which expired on Feb. 28, by inserting a new date of Apr. 30.

Several delegates voiced opposition to an additional amendment that outlined provisions in the event that the Navajo Nation revokes its approval of the amended lease after the lessees have paid the signing bonus.

The amendment also stated that the lessees shall not be required to pay any accrued payments if the Navajo Nation revokes its approval of any 323 grants, and that the Navajo Nation shall refund all payments made by the lessees should the Nation revoke its approval of any 323 grants.

The 323 grants are the rights-of-way for lands leased to NGS from the Navajo Nation.

Delegate Benally opposed the amendment saying, “We are agreeing to penalize ourselves, yet there is no penalties for them. Please do not go along with this amendment.”

After nearly an hour of debate, Council voted 13-7 to approve the amendment.

Council also approved an amendment with a vote of 20-0, requiring NGS lessees to provide a 2-year written notice to the Navajo Nation if the lessees choose to permanently cease all NGS operations prior to the end of the 25-year lease extension, as opposed to the original 90-day notice.

Prior to the vote on the main motion, Council approved two amendments aimed at preventing NGS from opposing the Navajo Nation’s future pursuits of water rights, and to ensure that members of the Resources and Development Committee and the Division of Economic Development meet annually with NGS officials to discuss opportunities for NGS to conduct business with Navajo-owned businesses.

Delegate Benally voiced support for the legislation, and expressed appreciation to Council colleagues for approving amendments specifically intended to support Navajo employment preference.

“I was very concerned about Navajo preference because I want jobs for my people — and they belong to my people, first and foremost,” Delegate Benally said.

Council Delegate Jonathan Nez (Shonto, Navajo Mountain, Oljato, Ts’ah Bii Kin) expressed support for the legislation and thanked his fellow colleagues for advocating for Navajo people.

“I was hesitant to move this forward because of the concerns that I had, but with the wisdom brought forth by my colleagues, this is one of those good legislations that I can support,” said Delegate Nez.

In reference to disagreements over the formation of President Ben Shelly’ assembled negotiating team for the NGS lease extension, Delegate Nez offered words of advice for future discussions.

“I ask the executive branch to include the Navajo Nation Council in future negotiations, and together we can do great things for the Navajo Nation,” Delegate Nez said.

Moments before Council members casted their deciding votes shortly after 11:00 p.m., Speaker Naize addressed the audience and also recognized the Council’s efforts in making critical decisions for the Nation and the Diné people.

“Those of you in the audience, you have watched your Council Delegates in action all day and there were some words that were exchanged, but as you see, we are now all united again,” said Speaker Naize.

Council approved Legislation No. 0042-13, with a 20-1 vote.

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